

# DECISION



24873  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-209576

DATE: April 15, 1983

MATTER OF: Houston Fearless 76

## DIGEST:

Protest against a noncompetitive award for a film processor is sustained where record indicates requirement was not synopsized timely in Commerce Business Daily. Although procurement was improperly sole sourced, there is no legal basis to allow any compensation for alleged loss of business to firm which did not submit offer.

Houston Fearless 76 (Houston) protests the sole-source award to Allen Products Company (Allen) under solicitation No. F40605-82-R0025, issued by Arnold Air Force Station, Tennessee.

The protest is sustained.

The solicitation called for a 16mm film processor for the Arnold Engineering Development Center. The contract was negotiated with Allen under 10 U.S.C. § 2304(a)(10) (1976), as implemented by Defense Acquisition Regulation (DAR) § 3-210.2(i) (1976 ed.), which permits negotiation where the proposed contract is for property or services for which it is impractical to obtain competition by formal advertising. A contract was awarded to Allen on September 30, 1982, and the processor was delivered on October 25, 1982.

Houston contends that it and other firms could have supplied the required equipment, and that the contracting officer's actions may have been "arbitrary or capricious or a deliberate attempt to exclude any competitors." Under these circumstances, Houston requests compensation for its alleged loss of business.

The Air Force reports that the equipment called for was not standard type equipment, but had a number of unique capabilities with stringent capabilities in the chemistry system and dimensional restrictions because the equipment had to fit into a specific area. The Air Force states that

at the time of award, as well as prior to award, there was no information available to the contracting officer which indicated any source other than Allen could manufacture a film processor which could meet all performance requirements and size considerations. The Air Force states that although this belief may have been mistaken, it was not arbitrary or capricious. However, upon reviewing the facts in this case, the Air Force finds that the contracting officer failed to follow applicable procedures with regard to a source sought synopsis as required by Air Force Systems Command, Defense Acquisition Regulation (DAR) Supplement 1-005.4(d), and also failed to synopsise this procurement in the Commerce Business Daily (CBD) 10 days before the issuance of the solicitation as required by DAR § 1-1003.2. The synopsis did not appear in the CBD until 2 days prior to the award. However, the Air Force recommends that the award be allowed to stand since the equipment ordered has already been delivered.

The record indicates that the Air Force did not comply with the applicable procurement regulations cited above and, therefore, we sustain the protest. However, since the contract is completed, corrective action by our Office is not possible. The Air Force states that Headquarters, Air Force Systems Command, will issue a letter to all field activities to emphasize the necessity to follow prescribed procedures in proposed sole-source acquisitions.

Houston requests compensation for the alleged loss of the business represented by the contract. There is no legal basis for allowing such compensation. Proposal preparation costs can be paid only upon a showing that the contracting agency's actions were arbitrary or capricious and that there was a substantial chance that the claimant would have received the award, but for those actions. Decision Sciences Corporation - Claim for Proposal Preparation Costs, B-196100.2, October 20, 1980, 80-2 CPD 298. Under the circumstances here, there is no basis to consider proposal preparation costs. Further, recovery of other costs or anticipated profits is not appropriate. Keco Industries, Inc. v. United States, 192 Ct. Cl. 773, 428 F.2d 1233 (1970). In addition, expenses incurred in pursuing a protest are noncompensable costs. Descomp, Inc. v. Sampson, 377 F. Supp. 254 (D. Del. 1974); T&H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345.

The protest is sustained but the request for compensation is denied.

*for* *J. H. Barclay Jr.*  
Comptroller General  
of the United States